

## APPEAL NO. 93508

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on March 19, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) reached maximum medical improvement (MMI) on February 28, 1992, with a 14% whole body impairment. He also determined that the claimant's disability ended on February 28, 1992. The claimant disagrees with several of the hearing officer's findings of fact and conclusions of law and essentially urges that he has not reached MMI and, therefore, should have no impairment rating and that he still has disability. Respondent (carrier) asserts that there is sufficient evidence to support the hearing officer and asks that the decision be affirmed.

## DECISION

Determining there is sufficient evidence to support the findings and conclusions of the hearing officer, the decision is affirmed.

There was no dispute that the claimant was seriously injured in a sandblasting operation when he was hurled off a scaffold on (date of injury). The issues before the hearing officer at the contested case hearing and now before us on appeal are: (1) whether and when the claimant reached MMI; (2) if so, his impairment rating; and, (3) whether the claimant has disability.

The evidence is set forth fairly and adequately in the hearing officer's Decision and Order, is adopted for the purpose of this decision and will only be outlined here. There is considerable medical evidence in the record and, understandably, some part of it conflicts with other parts. However, of particular significance to the determination of the issues in this case is the following: (1) a letter from the claimant's second treating doctor, (Dr. Y), to the carrier dated October 26, 1992, which established that he advised the claimant that he could return to work as of "2/13/92," (2) a Report of Medical Evaluation (TWCC Form 69) from the claimant's treating doctor which gives a whole body impairment rating of zero percent with a notation "Pt released to return to full duty 2/28/92," (3) a Report of Medical Evaluation (TWCC Form 69) from the Commission's designated doctor which certifies an MMI date of 2-28-92 with a 14% whole body impairment rating (subsequent correspondence shows the correct version of the Guides to the Evaluation of Permanent Impairment, American Medical Association was followed), and (4) correspondence dated January 5, 1993 from (Dr. C) (who the claimant first treated with), a Diplomate of the American Board of Internal Medicine, who states he has reviewed the claimant's medical records and opines that the claimant "has a hidden agenda with respect to his reluctance to go back to the work force" and that "by any objective measurement is physically prepared to return to work but lacks an emotional and cognitive willingness to return to work for undefined reasons." Other medical evidence in the file includes an MRI report dated "2-01-93" which shows normal bony alignment and impressions of "mild central disc protrusion C3-C4 and C4-C5"

and "minimal disc dehydration L1-L2, L2-L3, and L5-S1 levels with no evidence of focal HNP, suggestion of pars interarticularis defect L5-S1." A report from the Pain Therapy Clinic Inc., dated September 23, 1992, signed by JW, D.C., under "Diagnosis," lists 15 separate codes and indicates that claimant remains unable to perform any work and recommends regular visits to the clinic with further diagnostic studies.

The claimant testified that he wants to go back to work but that he doesn't feel good and that he did not feel he was completely cured. He also indicated that he went back to light duty sometime in April (it is not clear from the record if this referred to 1991 or 1992) but was laid off in May. He also testified that he was involved in an automobile accident in July 1992 and that he was treated for neck, back, shoulder and hand injuries as a result. There is a separate action on this matter.

The hearing officer gave presumptive weight to the MMI certification and impairment rating of the designated doctor and concluded that the great weight of the other medical evidence was not contrary thereto. Article 8308-4.25 and 4.26. Our review of the evidence finds abundant and sufficient support for the hearing officer's determination. The hearing officer also determined that the claimant's disability ended on February 28, 1992. Again, our review of the record finds sufficient support for the hearing officer's determination. Clearly, the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. See Cain v. Bain, 709 S. W.2d 175 (Tex. 1986). Only if we were to so find, which we do not, would there be a sound basis to disturb the hearing officer's decision. Accordingly, the decision is affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Lynda H. Nesenholtz

Appeals Judge